IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No.2896 of 2002

Date of Decision: December 20, 2007

The State of Punjab and others .....Appellants

Versus

Jatinder Kumar .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Piyush Kant Jain, Additional AG Punjab
for the appellants.

Mr.RS Bajaj, Advocate for the respondent.

S. D. ANAND, J.

1. Facts, apparent from the material obtaining on the file, are as under:

The plaintiff-respondent had been recruited as an S.P.O. in the Police District, Batala on 12.2.1989. The Competent Authority ordered his discharge from the Police Force vide order dated 13.2.1993 which (order) purports to have been granted in terms of police rules 12.21 of the Punjab Police Rules, 1934 (hereinafter referred to as “the Rules”).

2. The plaintiff-respondent challenged the validity of that order on the plea that it was not a case of discharge simplicitor in terms of the aforementioned Rules and that, in fact, the impugned order stigmatising him is penal in character which could not have been granted without holding of a regular departmental enquiry.

3. The learned Trial Court dismissed the suit, vide judgment and decree dated 28.1.2000. In a judgment of reversal, the learned First

Appellate Court allowed the appeal and invalidated the impugned order. The Competent Authority was, however, granted liberty to hold an enquiry in accordance with law and to pass an appropriate order thereafter.

4. The State of Punjab and its two functionaries (Senior Superintendent of Police, Batala and Inspector General of Police, Border Force, Amritsar) are in appeal.

5. Mr.Piyush Kant Jain, learned Additional Advocate General, Punjab, argued that the judgment of reversal recorded by the learned First Appellate Court is unsustainable in view of the law laid down by a Full Bench of this Court in Sher Singh Vs. State of Haryana and others, (1994-1) PLR 456.

6. The plea was contested by Mr.RS Bajaj, learned counsel appearing on behalf of the respondent, who argued that the impugned order being stigmatic in nature could not have been validly passed in terms of Rule 12.21 of the Rules. As against the Full Bench judgment of this Court, reliance in support of the advocated view was placed upon Major Singh Vs. State of Punjab, 2000(4) SCT 1049, Ex-Constable Rajinder Kumar Vs. State of Haryana, 2002(2) S.C.T. 285, Prithipal Singh Vs. State of Punjab and others, 2000(3) RSJ 736 and State of Haryana and another Vs. Jagdish Chander, 1995(2) RSJ 869.

7. For appropriate appreciation of the controversy, it will be appropriate to re-produce hereunder the impugned order in the first instance:

> "After going through relevant record as well as the enquiry report carefully, he was issued a short cause notice for dismissal from the Police force vide this office No.1660, dated 21.1.1998. The reply

of which was received within time limit. I have carefully gone through the enquiry file and reply given by him and have found it unsatisfactory and irrelevant type. I find that he has committed an offence by deceiving the department by procuring forged relaxation letter for his enlistment and thus has managed to get himself recruited."

8. As would be evident from a perusal of the above quoted impugned order, the 'discharge' of the plaintiff-respondent from the force was ordered on a finding that the former had "committed an offence by deceiving the Department by procuring forged relaxation letter for his enlistment and thus has managed to get himself recruited." It was a pure and simple case where the Competent Authority ordered ouster from force of an employee who had obtained enlistment by procuring a forged relaxation letter. It cannot, by any stretch of interpretation, be said to be a case of discharge simplicitor. It is a pure and simple case in which the Competent Authority stigmatised the plaintiff-respondent on the above charge. Such an order cannot be justified on the touch-stone of the provisions of Rule 12.21 of the Rules.

9. Though, it cannot be disputed that the Full Bench ruling rendered by this Court in Sher Singh's case (supra) would appear to support the point of view canvassed on behalf of the appellants, there can be no controversy either that this ruling does not hold the fort in view of the law laid down by the Apex Court in Major Singh's case (supra), Ex-Constable Rajinder Kumar's case (supra), Prithipal Singh's case (supra) and State of Haryana and another's case (supra). In Major Singh's case (supra), a police employee had been discharged in terms of Rule 12.21 of the Rules on a

finding relatable to his work and conduct. The order indicated that the employee had suffered certain previous punishments as well. The order also noticed that the employee was guilty of indulging in hooliganising in the barracks under the influence of liquor. The learned Trial Court held that the order of discharge was by way of penalty. It decreed the suit. The learned First Appellate Court dismissed the appeal and affirmed the judgment rendered by the learned Trial Court. In second appeal, this Court recorded a view that the impugned order was of discharge simplicitor and that it did not cast any stigma on the employee. The Apex Court did not agree with the view recorded by this Court and held as under:

> "It is now well settled by a catena of decisions of this Court that in order to be treated as an order of discharge simplicitor it, on the face of it should not cast any aspersion or stigma on the person concerned and he must simply by told off the gates on the ground of unsatisfactory work. Rule 12.21 itself fell for consideration of this Court in the case of State of Haryana and another Vs. Jagdish Chander, 1995(2) SCC 567: 1995(2) SCT 427 (SC). This Court clearly observed that the findings of habitual absence and indiscipline necessarily cast a stigma on the career of the delinquent and would be an impediment for any future employment elsewhere. Consequently, such an order could not be sustained under Rule 12.21 of Punjab Police Rules.
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> The aforesaid decision squarely applies to the facts of the present case. It is unfortunate that this decision, though rendered as early as in 1995, was not brought to the notice of

the learned Single Judge who decided the Second Appeal in the present case in August 1998. We are sure that if the aforesaid judgment was brought to the notice of the learned Single Judge he would have come to the correct conclusion on the facts of the present case. For all these reasons, therefore, this appeal is allowed. The impugned order of the High Court in Second Appeal is set aside. The decree passed by the trial Court and as confirmed by the First Appellate Court shall stand confirmed."

10. In Prithipal Singh's case (supra), a similar order was held to be stigmatic and the same applies to State of Haryana and others Vs. Jagdish Chander's case (supra).

11. In Ex-constable Rajinder Singh's case (supra) also, a similar view was recorded by a Division Bench of this Court.

12. In the light of the foregoing discussion, the substantial question of law is answered as under:

"Though the impugned order purports to be of discharge simplicitor in terms of Rule 12.21 of the Rules, it actually is penal in character inasmuch it stigmatises the plaintiff-respondent on charge of forgery/fraud in obtaining enlistment on the basis of a forged relaxation letter."

13. There is no force in this second appeal. It shall stand dismissed with costs of the cause throughout.

(S. D. ANAND)
JUDGE

December 20, 2007
SRM

Note: Whether referred to reporter ? Yes/No